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SB 1592-78, SB 1937-78, SB 1964-78
SB 2209-78, SB 2292-78, SB 2409-78
SB 2435-78, and SB 2539-78

RELATING TO THE ENVIRONMENTAL IMPACT STATEMENT SYSTEM

Statement for the
Senate Committee on Ecology, Environment and Recreation
Public Hearing 17 February 1978

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The bills listed above propose various amendments to the EIS Act, HRS Chapter 343. The Environmental Center has recently completed a study, undertaken at the request of the Office of Environmental Quality Control, of the Hawaii State Environmental Impact Statement System (D.C. Cox, P.J. Rappa, J.N. Miller, Environmental Center SR:0019, 187 pp, January 1978). Copies of the report have been supplied to the members of this committee. The amendments proposed in the eight bills were in general not reflected in the recommendations and suggestions in the report, but the report will be of use in evaluating them. This statement on the bills does not reflect an institutional position of the University.

SB 1592-78

SB 1592 proposes to include, among the categories of actions that are covered by the EIS system, actions that would have "adverse significant effect on current and future supplies of energy resources which would result in the depletion of such resources."

The language is redundant in that any depletion of energy resources constitutes an adverse effect on such resources.

We call attention to the fact that most of the energy-resource impacts of development in Hawaii are on out-of-state resources, principally fossil fuel resources.

Many actions having significant implications with respect to energy resources--in-state as well as out-of-state are already covered by the EIS system, and to the extent that they are, the energy resource impacts must be discussed in the EIS's. The actions that would have such effects that are not covered by the system primarily those that will not use state or county lands or funds and will not be undertaken in the conservation land use district or the shoreline setback area. Major developments in the urban district represent the principal exceptions.

More effective than EIS system coverage of such developments would be a system calling for comprehensive rationale impact statements on the general plans which guide and control such developments. In the absence of such a system, it is worth considering amending the EIS Act as proposed in SB 1592 (but less redundantly).

SB 1937-78

SB 1937 would amend the definition of an environmental impact statement so that an EIS must include impacts of an action on agricultural lands. Since such effects are among the significant impacts that any EIS must address, the effect of the bill will be slight.

There are legitimately great concerns with the effects of development on agriculture. Such concerns would be reflected better by including, among the actions subject to the EIS system, those that:

- 1) propose any use in the agricultural land use district that requires a special use permit, particularly those in prime or unique agricultural land, and
- 2) propose any reclassification of land now designated as part of the agricultural land-use district.

SB 1964-78

This bill has been introduced in short form only, so we have made no comment on it specifically. However, this bill might be used as a vehicle for a more general amendment of the EIS Act, a possibility to which we will return in final comments.

SB 2209-78

SB 2209 would amend HRS 343-5, which pertains to the rules and regulations of the Environmental Quality Commission, proposing to substitute the term "rules" for the present combination of "rules and regulations" of the OEQC. We understand that the terms rules and regulations have much the same effect under the law, but the EQC has usefully made a distinction between "rules," which govern its own procedures, and "regulations" which specify how the EIS system is to operate. We suggest that the proposed restriction to "rules" is unwise.

SB 2209 also proposes to amend the prescription that the EQC Regulations include a list of exempt classes of action. Under the amendment the exemption of any action "that would require the development of water" would be prohibited. To be exempt, actions must not have significant environmental effects. Any water development that significantly affected a water resource would have a significant effect. Hence, the proposed amendment would have little effect.

However, not all water developments or actions requiring water developments are covered by the EIS Act. As an alternative and more effective means of ensuring that additional water developments will be subject to the EIS system, we suggest that HRS 343-4(a) be amended to add, to the categories of action listed in subsection (a)(2): "All actions proposing water developments," as is proposed in SB 2409, but with a significance criterion attached.

SB 2292-78

Sb 2292 would extend the time limit for initiation of judicial proceedings concerning EIS-acceptance decisions. The issue involves a judgement on which a Center opinion is not warranted.

SB 2409-78

SB 2409 proposes amendment to HRS Chapter 343 to extend the coverage of the EIS system to water developments. The statewide concern with the adequacy of water resources indicated by the number of bills introduced in this legislative session suggest that this extension is appropriate. The means of providing the coverage by the EIS system is also appropriate, except that the criterion of the significance of the impacts should apply to the coverage of water developments as well as other actions.

SB 2435-78

SB 2435 would amend HRS 343 to add, to the coverage of the EIS system, i) any water developments of more than 10,000 gpd, and ii) any alterations of present or historic taro growing areas.

A number of other bills being considered in this legislative session indicates concerns with the adequacy of water resources. In the light of this concern, coverage of water developments by the EIS system may seem appropriate. We suggest, however, that it would be best not to specify a minimum level of development as a criterion for coverage, but to apply the criterion of the significance of the impact, which is a common criteria for all other actions. (The development of 10,000 gpd would only be significant in the case of small water resources.) We also suggest that the coverage should extend to significant increases in development, and not merely new developments. We suggest further that the provision, if adopted, should be inserted at the end of the list of types of actions covered on the basis of geographic criteria (sub sec. (A) through (D)) and ahead of the type of actions covered on the basis of an administrative criterion (subsec. E).

The concern with alteration of present or historic taro growing areas might be reflected best, we suggest, by coverage of actions proposing any use of unique agricultural lands, because taro lands are the principal component of these lands.

SB 2539-78

SB 2539 proposes to add a new section to HRS 343 that would require that the impacts of neighboring actions be considered, together with the impacts of the actions to which an EIS pertains, in determining the significance of the impacts. The intent of the bill is admirable.

The EQC Regulations already provide that agency actions "shall be treated as a single action when:

- 1) the component actions are phases or increments of a larger total undertaking;
- 2) an individual project is a necessary precedent for a larger project; or
- 3) when an individual project represents a commitment to a larger project...."

The purpose of the bill is, thus, at least partially met by the EQC Regulations.

The problem with meeting the purpose in the case of applicant actions is that it is not possible to know what neighboring actions are being considered until applications have been made for their approval.

The benefit provided by the proposal in SB 2539 would thus be somewhat limited. If this benefit justifies the provision, we have no suggestion how the provision might be made better than in the form of a new section as proposed.

Final Comment

In the light of the concerns with energy resources, water resources, and agricultural resources, consideration should be given to applying the EIS system to actions that would significantly effect the natural resources of the state in general, rather than these individual resources. The major objections to such an extension of the EIS system would be the increased cost of the system and the likelihood that the system as presently staffed would be overburdened.

We would like to call to the attention of the Committee the introduction in the House of HB 2890, a bill that reflects the suggestions and recommendations of the Center's report on the EIS system. This bill will be considered at a public hearing on 21 February by the House Committee on Ecology and Environmental Protection. At that hearing we will submit a statement calling attention to the concerns that are expressed in House equivalents of several of the EIS bills considered at this hearing and proposing revisions of the bill reflecting these concerns. We suggest to the Committee that it might amend one of the EIS bills considered at this hearing, including SB 1964, which was introduced only in short form, to parallel HB 2890, with or without the additional revisions. We will be pleased to supply this Committee with our statement on HB 2890 if that would be of interest.